

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

**AGREEMENT AND ADMINISTRATIVE ORDER ON CONSENT FOR RESPONSE ACTION BY BONA FIDE
PROSPECTIVE PURCHASER**

Anaconda Mine

Operable Unit 8

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS.....	1
II.	PARTIES BOUND	2
III.	DEFINITIONS	2
IV.	FINDINGS OF FACT	5
V.	DETERMINATIONS	8
VI.	AGREEMENT	9
VII.	WORK TO BE PERFORMED	9
VIII.	DESIGNATION AND AUTHORITY OF THE PROJECT COORDINATOR.....	13
IX.	ACCESS	14
X.	RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION.....	14
XI.	DISPUTE RESOLUTION	14
XII.	FORCE MAJEURE	15
XIII.	INTEREST AND PENALTIES.....	16
XIV.	CERTIFICATION	17
XV.	COVENANT NOT TO SUE BY THE DIVISION	17
XVI.	RESERVATION OF RIGHTS BY THE DIVISION.....	18
XVII.	WORK TAKEOVER.....	19
XVIII.	COVENANT NOT TO SUE BY PURCHASER AND PURCHASER’S RESERVATION OF RIGHTS.....	20
XIX.	CONTRIBUTION.....	21
XX.	RELEASE AND WAIVER OF LIEN(S)	21
XXI.	INDEMNIFICATION	22
XXII.	MODIFICATION.....	22
XXIII.	APPENDICES.....	23
XXIV.	NOTICE OF COMPLETION.....	23
XXV.	EFFECTIVE DATE	23
XXVI.	PAYMENT OF COSTS	23
XXVII.	NOTICES AND SUBMISSIONS.....	24
XXVIII.	MERGER	24
XXIX.	SIGNATORIES/SERVICE.....	25

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION AGREEMENT AND ADMINISTRATIVE ORDER ON
CONSENT FOR RESPONSE ACTION BY BONA FIDE PROSPECTIVE PURCHASER

1. This Agreement and Administrative Order on Consent ("Agreement") is voluntarily made and entered into this 4th day of May, 2016, by and between (i) the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection (the "Division" or "NDEP"), and (ii) Singatse Peak Services LLC, a Nevada limited liability company ("Purchaser") (collectively, the "Parties") under Nevada Revised Statute ("NRS") 459.930. Under this Agreement, Purchaser agrees to perform a response action at or in connection with the property located at 102 Birch Drive in Lyon County, Nevada known as the "Anaconda Mine Site."

I. JURISDICTION AND GENERAL PROVISIONS

2. The Division is exercising its jurisdiction over this matter pursuant to Nevada Revised Statutes (NRS) Chapters 445A, 445B and 459. Purchaser has consented to the Division's jurisdiction, pursuant to the NRS, over the Purchaser regarding the content of this Agreement and its jurisdiction to enter such agreements. Purchaser shall not challenge the terms of this Agreement or the Division's jurisdiction to enter and enforce this Agreement; however, Purchaser does not waive its right to challenge the Division's interpretation of any terms or conditions of this Agreement through Dispute Resolution in Section XI (Dispute Resolution).
3. The Parties agree that the First Judicial District Court in and for the County of Carson City, Nevada will have jurisdiction for any enforcement action brought with respect to this Agreement.
4. Because the United States Environmental Protection Agency ("U.S. EPA") is the lead agency on this Site, the Division has notified the U.S. EPA of this action.
5. The Purchaser represents that it is a bona fide prospective purchaser ("BFPP") as defined by NRS 459.930(6)(b) and Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Site, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1) and NRS 459.930, with respect to the Site. In view, however, of the voluntary response action and Purchaser's obligations to be undertaken in connection with the Site, and the risk of claims under CERCLA and NRS being asserted against Purchaser notwithstanding Section 107(r)(1) and NRS 459.930(1)(a) as a consequence of Purchaser's activities at the Site pursuant to this Agreement, one of the purposes of this Agreement is to resolve, subject to the reservations and limitations contained in Section XVI (Reservations of Rights by the Division), potential liabilities as set forth in Section XV (Covenant Not to Sue by the Division). It is the Parties' intent that, by agreeing to perform the Work, entering into this Agreement and by performing under this Agreement, Purchaser's liability shall in no manner be increased. Nothing in this Agreement nor any activity of Purchaser in furtherance of this Agreement shall in any manner alter Purchaser's defenses to liability existing as of the Effective Date of this Agreement including but not limited to Purchaser's BFPP defense to liability under CERCLA and the equivalent NRS, conditioned upon the complete and satisfactory performance by Purchaser of all of its obligations under this Agreement.

6. The resolution of this potential liability, in exchange for Purchaser's performance of the obligations under this Agreement is in the public interest.
7. The resolution of Purchaser's potential liability as a result of the voluntary response action and Purchaser's obligations to be undertaken pursuant to this Agreement is limited in scope to the Response Activities and liabilities arising therefrom and is not intended to settle all issues between the Parties.
8. The Division and Purchaser recognize that this Agreement has been negotiated in good faith. The Division and Purchaser agree to comply with and be bound by the terms of this Agreement and further agree that they will not contest the basis or validity of this Agreement or its terms.

II. PARTIES BOUND

9. This Agreement applies to and is binding upon the Division and upon Purchaser. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's or the Division's responsibilities under this Agreement.
10. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Agreement, and, where appropriate, receive a copy of this Agreement. Purchaser shall be responsible for any noncompliance with this Agreement by Purchaser, its contractors, subcontractors and representatives.

III. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.
 - a "Action Memorandum" shall mean the Request for a Time-Critical Removal Action at the Anaconda Yerington Mine Site, Yerington, Lyon County, Nevada, dated June 8, 2012, and included as Appendix C to this Agreement.
 - b "Administrator" shall mean the Administrator of the Division.
 - c "CEM" shall mean a Certified Environmental Manager certified by the State of Nevada.
 - d "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 - 9675.
 - e "Contractor" shall mean any entity or person, including any contractor, subcontractor, consultant, firm or laboratory, retained by Purchaser or the Division to conduct or monitor any portion of the Work performed pursuant to this Agreement.
 - f "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday,

Sunday, or state holiday, the period shall run until the close of business of the next Working Day.

- g “Deliverable” shall mean, without limitation, any work plan, report, progress report, plan data, document, information, or submittal, which Purchaser is required to submit to the Division under the terms of this Agreement or other document further defined by the Division as a Deliverable.
- h “Effective Date” shall be the effective date of this Agreement as provided in Section XXV.
- i “U.S. EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.
- j “Environment” means air, land (including subsurface strata), and water (including groundwater) or any combination or part thereof.
- k “Environmental Commission” means the Nevada State Environmental Commission as defined by NRS 445B.200 to 445B.245, inclusive.
- l “Environmental Contaminant(s)” means any solid, liquid, gaseous, or thermal irritant, contaminant, substance, waste or any other material, whether hazardous or not, including, but not limited to, smoke, vapor, dust, soot, fumes, alkalis, asbestos, chemicals, hazardous constituents, petroleum products or constituents, metals, medical or pathological wastes or radioactive materials, wastewater, debris and Waste Material, regulated under applicable Environmental Law (including the definitions at NRS §§ 444.490, NRS §§ 445A.810, NRS §§ 445A.400, NRS §§ 445A.405, NRS §§ 445B.110, NRS §§ 445B.140, NRS §§ 459.429, NRS §§ 459.430 and NRS §§ 459.448).
- m “Environmental Law(s)” means each federal and state law and regulation relating in any way to Environmental pollution or the protection of the Environment or the Release of any Environmental Contaminant into the Environment including, without limitation, the Nevada Water Pollution Control Law, NRS §§ 445A.010 to 445A.730, inclusive, the Nevada Solid Waste Disposal Law, NRS §§ 444.440 to 444.645, inclusive, the Nevada Hazardous Waste Disposal Law, NRS §§ 459.400 to 459.652, inclusive, the Nevada Air Pollution Control Law, NRS §§ 445B.230 to 445B.640, inclusive, the Nevada Underground Storage Tank Law, NRS §§ 459.800 to 459.856, inclusive, the Nevada Radiation Control Law, NRS §§ 459.010 to 459.290, inclusive, the Clean Air Act, 42 U.S.C. §§ 7401 to 7671q, inclusive, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601- 9675, and the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, each as may be amended from time to time, and including the implementing regulations, promulgated respectively thereunder.
- n “Existing Contamination” shall mean:

- i any Environmental Contaminants present or existing on or under the Site as of the Effective Date;
 - ii any Environmental Contaminants that migrated from the Site prior to the Effective Date; and
 - iii any Environmental Contamination presently at the Site that migrate from the Site after the Effective Date.
- o "Interest" shall mean interest at the Prime Rate plus two percent (2%), compounded monthly, but in no case will be less than five percent (5%) nor greater than twelve percent (12%).
- p "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- q "Operable Unit 8" shall mean that portion of the Site designated as Operable Unit 8 by the USEPA as shown on the map attached at Appendix A.
- r "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.
- s "Parties" shall mean the Division and Purchaser.
- t "Pilot Study" shall mean the implementation and evaluation of the enhanced evaporation system proposed by Purchaser to extend the capacity of the existing fluid management system ponds ("FMSP") with an objective of obtaining empirical data to design a full-scale system to extend the life of the existing fluid management system by several years. The Pilot Study is further detailed in Appendix B.
- u "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 – 6992 (also known as the Resource Conservation and Recovery Act).
- v "Response Activities" shall mean the response actions anticipated by this Agreement as set forth in Section VII (Work to be Performed).
- w "Response Costs" shall mean all necessary costs reasonably incurred by the Division for Work Takeover, as set forth in Section XVII.
- x "Section" shall mean a portion of this Agreement identified by a Roman numeral.
- y "Agreement" shall mean this Nevada Division of Environmental Protection Agreement and Administrative Order on Consent for Response Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXIII (Appendices)). In the event of conflict between this Agreement and any appendix, this Agreement shall control.

- z "Site" shall mean the Anaconda Mine Site encompassing approximately 3,600 acres, located at 102 Birch Drive in Lyon County, Nevada, and depicted generally on the map attached as Appendix A. The Site includes all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be.
- aa "State" shall mean the State of Nevada, including, as appropriate, its agencies, departments, political subdivisions, agents, and employees.
- bb "Supervising Contractor" shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Agreement and to sign and approve the Final Report submitted concerning such Work.
- cc "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- dd "Work" shall mean the activities Purchaser is required to perform under Paragraph 34 of this Agreement, generally, the Purchaser's performance of the Pilot Study.

IV. FINDINGS OF FACT

12. The Division and Purchaser agree that these Findings of Fact as stated below are relevant to the Agreement and not intended to be a complete recitation of the history of the Site or the activities thereon.
13. The Site is an abandoned, low-grade copper mine and extraction facility located in the Mason Valley, in Lyon County, Nevada. The Site is located approximately one mile west of Yerington, directly off of Highway 95. Approximately fifty percent of the Site is privately owned land, and the rest is land within the jurisdiction, custody and control of the United States Bureau of Land Management ("BLM"). The Site occupies 3,468.50 acres of disturbed land in a rural area, bordered to the north by residential acreage and open fields of alfalfa and onions, and to the east by Highway 95, which separates the Site from the city of Yerington, Nevada. To the south continues BLM range land, and to the west and southwest the Singatse mountains.
14. Facilities associated with historic mining operations at the Site include an open-pit mine, mill buildings, tailing piles, waste fluid ponds, and the adjacent residential settlement known as Weed Heights. A network of leach vats, heap leaching pads and evaporation ponds remains throughout the Site.
15. The Site began operation in or about 1918, originally known as the Empire Nevada Mine. In 1953, Anaconda Copper Mining Company ("Anaconda") acquired and began operating the Site. In or about 1977, Atlantic Richfield Company ("ARC") acquired Anaconda and assumed its operations at the Site. In June 1978, ARC terminated operations at the Site. In or about 1982, ARC sold its interests in the private lands within the Site to Don Tibbals, a local resident, who subsequently sold his interests with the exception of the Weed Heights community to Arimetco, Inc. ("Arimetco"), the current owner. Arimetco operated a copper recovery operation from existing ore heaps within the Site from 1989 to November 1999. Arimetco has terminated

operations at the Site and sought protection from creditors in the United States Bankruptcy Court in Tucson, Arizona.

16. On April 27, 2011, Purchaser bought certain assets of Arimetco associated with the Site through a proceeding in the United States Bankruptcy Court in Tucson, Arizona. Purchaser owns approximately 1800 acres of the Site, as depicted on the map attached hereto as Appendix A.
17. On December 22, 2015, EPA sent the Governor of Nevada a letter calling on the State of Nevada to support a National Priorities List ("NPL") listing for the Site or produce the funding necessary to remediate the features of Operable Unit 8.
18. In an effort to assist and support the local business community and the State in finding an alternative to listing the Site on the NPL, Purchaser has agreed to pilot test enhanced evaporation at the Site to provide increased capacity in the fluid management system ponds ("FMSP") which collect fluids from Operable Unit 8.
19. During the 25-year operational period that Anaconda and ARC operated the Site, they removed approximately 360 million tons of ore and debris from the open pit mine, much of which now remains in tailings or heap leach piles. Anaconda and ARC beneficiated copper ores from the mine by two separate methods depending on the type. The mined ore contained copper oxides in the upper portion of the open pit and copper sulfides in a lower portion of the open pit. During on-Site milling operations, a copper precipitate was produced from the oxide ore and a copper concentrate was produced from the sulfide ore. In the first of two processing methods for the oxide ore, the operator placed the copper oxide ore in leaching vats and leached out copper with sulfuric acid. The copper precipitated out after passing over iron scraps. The second process, which started in 1965, used dilute sulfuric acid spread over the top of low grade oxide ore piles from which copper would leach out with the resulting acidic solution, with the copper again precipitated out after passing over iron scraps. Anaconda and ARC utilized this dump leaching method for over 10 years at the W-3 dump at the Site. To facilitate their leaching operations, Anaconda and ARC produced their own sulfuric acid at the Site at a rate of over 400 tons per day. To process the copper sulfide ore, Anaconda and ARC crushed the ore and produced copper, concentrate by flotation, with lime (calcium oxide) added to maintain an alkaline pH. The resulting copper concentrate was shipped off-Site for final processing.
20. Arimetco had used solvent extraction and electro-winning in its operations to extract copper from copper oxide ore, including the reprocessing of some ore first processed by Anaconda or ARC. The process used by Arimetco involved heap leaching the ore with sulfuric acid and collecting the pregnant acidic solution in a fluid management system with various collection ponds. Arimetco then refined the copper through an electro-winning operation, and recirculate the acid solution from the electro-winning vats back to the leach heaps. The leach heap pads continue to drain acidic fluids.
21. In 1999, at the request of the Yerington Paiute Tribe, EPA began an evaluation of the Site to determine the effectiveness of the existing pump-back system in preventing off-Site migration of contaminated groundwater and to determine whether any domestic wells had been impacted by the Site. EPA collected groundwater samples from on-Site monitoring wells, from the Wabuska Drain, and from nearby residential and community wells, including the wells of the Yerington Paiute Tribe. In November 1999, the NDEP collected additional samples. Analyses of

samples from the monitoring wells indicated concentrations of arsenic at 50 to 100 parts per billion ("ppb"), cadmium at 8 to 20 ppb, iron up to 1,400,000 ppb, mercury at 0.4 to 0.7 ppb, and nickel at 100 to 1200 ppb. In addition, samples from a shallow groundwater monitoring well located less than a quarter mile from the Site contained concentrations of arsenic at 60 ppb, copper at 30 ppb, and iron at 4,300 ppb. Drinking water maximum contaminant levels, for comparison, are as follows: arsenic at 10 ppb; cadmium at 5 ppb; iron at 600 ppb; mercury at 2 ppb; and nickel at 100 ppb.

22. Results of surface water analyses indicated elevated concentrations of arsenic, iron, lead, manganese and sulfate immediately downgradient of the Site in the Wabuska Drain. These concentrations diminished with distance from the Site along the length of the drain.
23. In October 2000, EPA conducted an Expanded Site Inspection at the Site, which consisted of collecting groundwater samples from six monitoring wells on and around the Site, and samples of standing water from a below ground cellar, pregnant leachate solution, tailings and leachate salts. These samples again confirmed high concentrations of contaminants, including beryllium, cadmium, chromium, lead, mercury, and selenium. The groundwater monitoring well samples revealed levels above the regulatory limits for drinking water of arsenic, beryllium, cadmium, chromium, lead, and selenium. EPA concluded from this study that toxic heavy metals exist in source materials at the Site and have contaminated groundwater.
24. Early in April 2006, the United States Fish and Wildlife Service reported observing a dead bird nearby some standing fluid on the sulfide tailings during the course of a natural resource damage assessment. In considering whether the bird mortality resulted from the ingestion of the fluid, which appeared to be the result of precipitation that had dissolved existing residues from past mining activities, EPA obtained and analyzed fluid samples from five areas of standing fluids on the north end of the Site. The sampling areas included the Arimetco pregnant solution collection ditch adjacent to the Vat Leach Heap Leach Pad. Preliminary analytical results of the Arimetco fluid sampled exhibited a pH of 2.7, uranium at 8,900 ug/l and elevated metals at approximately the same magnitude as seen in EPA's October 2000 sampling of similar pregnant solutions. Fluids with such low pH and elevated metals potentially pose acute toxicity to wildlife. Additionally, the elevated uranium concentrations pose a threat of substantial harm to the public health or welfare or the environment. In 2007 and 2008, EPA became aware of additional bird casualties at the Site.
25. In 2006, EPA completed a removal action to address a damaged Arimetco heap leach draindown evaporation pond, and conducted a removal assessment of the remaining Arimetco heap leach draindown ponds from July through August 2007. EPA also conducted a remedial investigation of the ponds and heap leach pads in September through October 2007. Samples from sediment below the ponds contained metals (copper, iron, and lead) and total petroleum hydrocarbons ("TPH") at concentrations exceeding industrial or residential soil PRGs. Samples from heap leach draindown solutions exhibited pH and specific conductance values ranging from 1.9 to 2.8 and 31,000 to 45,000 microhms per centimeter, respectively. Metals, specifically aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, copper, iron, lead, manganese, mercury, thallium and zinc exceeded primary or secondary drinking water maximum contaminant levels ("MCLs"). Radiological measurements from the heap leach draindown solutions generally exceeded the MCL for thorium isotopes 228, 230, and 232; uranium isotopes 234, 235, 238; and gross alpha particles. TPH (as diesel and kerosene) in the same samples

ranged from 750 to 2,100 micrograms per liter ("µg/L"), and all but one draindown solution sample exceeded the state of Nevada cleanup guideline of 1,000 µg/L for TPH. In August 2007 and from August through October 2008, EPA conducted additional removal actions to close inactive draindown ponds and repair the active draindown ponds for the Arimetco heap draindown system, as well as conduct a removal of high TPH soils.

26. EPA has confirmed that over 3,000 acres of tailings and Heap Leach Pads (HLPs) with a potentially high concentrations of metals remain at the Site, and that the abandoned process fluids emanating from the tailings have a low pH and contain excessive quantities of arsenic, cadmium, chromium, copper, and iron. Also present are radionuclides, including uranium, thorium, and radium.
27. Salts precipitating from the process fluids emanating from the tailings HLPs contain even higher concentrations of such metals and are filling in available space within the fluid pond system. Precipitant accumulation in the space in the fluid management ponds associated with the heap leach system reduces the fluid storage capacity from the system, thereby reducing the available space for fluids to accumulate and evaporate, thereby leading to greater risks of discharges over the sides of the ponds. Exposure to the tailings fluids and salts may occur to workers at the Site, trespassers and, as demonstrated by dead birds at the Site, wildlife. Deterioration of ponds and associated ditches may lead to a release of these materials into the environment.
28. In February 2012, the volume of fluid reporting to the leak detector in one particular pond, the Vat Leach Tailings ("VLT") Pond, increased dramatically, indicating that a leak exists in the top liner. There is no leak detection system associated with the bottom liner of the VLT Pond, so it is not possible to evaluate the integrity of the bottom liner. The fluid level in VLT Pond was lowered in order to minimize this leakage, although reducing the pond level also reduces the fluids storage capacity.
29. By agreement with the Division, U.S. EPA assumed the lead agency role for this Site.
30. Since acquisition, Purchaser has obtained permits, posted the first cash bond for the Site, initiated its exploration program, and cooperated with U.S. EPA, the Division, ARC and the local community. Purchaser has provided to the Division an Access Agreement dated August 13, 2013, and to U.S. EPA, a Consent for Access dated April 8, 2011. On October 5, 2009, the Division provided to Purchaser a "Reasonable Steps" letter that documents the Division's consideration of "reasonable steps" as of the date of the letter for the purpose of complying with the requirements at 42 U.S.C. § 9601(4)(D) and NRS 459.930, which is attached as Appendix D.
31. The Administrative Record supporting this action is available for review at the Nevada Division of Environmental Protection, located at 901 South Stewart Street, Carson City, Nevada 89701.

V. DETERMINATIONS

32. Based on the Findings of Fact set forth above, the Action Memorandum, and the Administrative Record supporting this response action, the Division has determined that:

- a The Site is a "facility" as defined by Nevada Administrative Code ("NAC") 445A.3452 and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by NRS 459.930(6)(e) and Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c Purchaser is a "person" as defined by NRS 459.930(6)(b) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d The conditions described in Section IV (Findings of Fact) above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by NAC 445A.3456 and Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- e The Response Activities provided in this Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. AGREEMENT

- 33. In consideration of and in exchange for the Division's Covenant Not to Sue in Section XV and Response Activities, the Division and Purchaser agree to comply with all provisions of this Agreement, including, but not limited to, all attachments to this Agreement and all documents incorporated by reference into this Agreement.

VII. WORK TO BE PERFORMED

- 34. Purchaser shall perform, in addition to any actions Purchaser may conduct to perform its reasonable steps, as anticipated in 42 U.S.C. § 9601(40)(D), the following actions:
 - a. Purchaser will perform the Pilot Study as further described in Appendix B. The Pilot Study shall include a Work Plan, schedule for implementation of the Work Plan, and a Health and Safety Plan. The conclusions of the Pilot Study will identify whether there are and what activities and operations are appropriate to provide fluid management capacity in the FMSP for the subsequent ten years from the date Purchaser submits the Study to the Division for review.
 - b. The Division may approve, disapprove, require revisions to, or modify the draft Work Plan and/or schedule for implementation in whole or in part. If the Division requires revisions, Purchaser shall submit a revised draft Work Plan within 30 days of receipt of the Division's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified by the Division in writing by the Division in accordance with the schedule approved by the Division. Once approved, approved with modifications, or modified by the Division, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Agreement.
 - c. Purchaser shall not commence any Work except in conformance with the terms of this Agreement. Purchaser shall not commence implementation of the Work Plan developed

hereunder until receiving written Division approval or modification pursuant to Paragraph 34(b).

35. Reporting.

- a Purchaser shall submit a written progress report to the Division concerning the Work every 60th day after the date of receipt of the Division's approval of the final Work Plan until completion of the Work, unless otherwise directed in writing by the Division. These reports shall describe those items required to be reported in the approved Work Plan.
- b Purchaser shall submit two (2) copies of all plans, reports or other submissions required by this Agreement or any approved work plan. Purchaser may submit such documents in electronic form to be specified by the Division.
- c Purchaser shall report any unexpected occurrence at the Site. Unexpected occurrences include, but are not limited to, interruption of remediation, unusual or unanticipated malfunctions, upsets, interruptions, delay, slowdowns, accelerations, and other discoveries that are not subject to other reporting requirements in the Work Plan or this Agreement.
- d Upon the occurrence of any event or unexpected occurrence that Purchaser is required to report, Purchaser shall, within twenty-four (24) hours of such event or unexpected occurrence, orally notify the Division's Project Coordinator or Alternate Project Coordinator if the Division's Project Coordinator is unavailable of such event. If neither the Division's Project Coordinator nor Alternate Project Coordinator is available, then the Division's Chief of the Bureau of Corrective Actions shall be the point of contact. In no case will this Paragraph relieve Purchaser from complying with State reporting requirements contained in NAC 445A.347 (Notice Required) when any such reportable event or unexpected occurrence occurs.
- e Within twenty (20) Days of the onset of such an event or unexpected occurrence, Purchaser shall furnish to the Division a written report, signed by the Purchaser's Project Coordinator, setting forth the events or unexpected occurrence and the response, and any proposed further response. Within thirty (30) Days of the conclusion of such an event, Purchaser shall submit a report setting forth all actions taken in response thereto.
- f All Deliverables and other documents submitted by Purchaser to the Division which purport to document Purchaser's compliance with the terms of this Agreement shall be signed by Purchaser's Project Coordinator, as defined in Paragraph 38. An annual certification regarding Purchaser's compliance with the terms of this Agreement shall be signed and certified by a responsible corporate officer of Purchaser. Such a certification will be submitted to the Division by January 31 of any year following a year in which Deliverables are submitted to the Division. A responsible corporate officer means: a president, secretary, treasurer, general manager, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation.

- g The annual certification required above, shall be executed before and notarized by a notary public and shall be in the following form:

I certify that this document and all documents or attachments submitted to the Division in the year just ended were prepared under the direction or supervision of the Company in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge and belief, formed after due and appropriate inquiry and investigation, the information contained in or accompanying the submittals and provided by the Company that I represent is true, accurate, and complete in all material respects. I certify that the submittals and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted and provided by the Company that I represent is, to the best of my knowledge and belief, true, accurate, and complete in all material respects. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____
Company: _____
Date: _____

- h In addition, all Deliverables and other documents that are authored by entities other than Purchaser on behalf of Purchaser to comply with the requirements of this Agreement and are submitted by Purchaser to the Division that are required under Nevada Law to be prepared or submitted by Purchaser's Certified Environmental Manager ("CEM") shall be signed and certified by the CEM responsible for the project. These Deliverables shall include the Jurat required by NAC 459.97285 and shall be in the following form:

I hereby certify that I am responsible for the services described in this document and for the preparation of this document. The services described in this document have been provided in a manner consistent with the current standards of the profession and to the best of my knowledge comply with all applicable federal, state and local statutes, regulations and ordinances. I hereby certify that all laboratory analytical data was generated by a laboratory certified by the NDEP for each constituent and media presented herein.

Signature: _____
Name: _____
Title: _____
Company: _____
Date: _____
EM Certificate Number: _____
EM Expiration Date: _____

36. Within 60 days after completion of the Work, Purchaser shall submit for the Division's review and approval in accordance with Section XXIV (Notice of Completion) a final report summarizing the Work. The final report shall conform, as applicable, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include to the extent that each is applicable a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the response action (e.g., manifests, invoices, bills, contracts, and permits). If the work is performed by a CEM, the final report shall include the certification in the above Paragraph. If the work is not performed by a CEM, the final report shall include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

37. Off-Site Shipments.

- a Purchaser shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-State waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the Project Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
 - i Purchaser shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Purchaser shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
 - ii The identity of the receiving facility and state will be determined by Purchaser following the award of the contract for the response action. Purchaser shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b Purchaser may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

The requirements of this Paragraph 37 shall not apply to Purchaser's shipments of any material from the Site apart from the Response Activities.

VIII. DESIGNATION AND AUTHORITY OF THE PROJECT COORDINATOR

38. The Purchaser and the Division shall each designate a Project Coordinator and, if applicable, Alternate Project Coordinator for the Site and will notify the Parties in writing of the name, address, and telephone number of such coordinators. The Project Coordinator shall be a representative of a team of individuals who have expertise to oversee the Site. The Purchaser's Project Coordinators shall not be an attorney for any Company and shall have responsible control of the Work. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. The Division's Project Coordinator will be the Division's designated representative for the Site. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least seven (7) Days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Purchaser's Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work, or shall retain Key Personnel who have such expertise. He or she may assign other representatives, including other Contractors, to serve as a Site representative for oversight of performance of daily operations during Site activities.

- a. Unless the Division notifies the Purchaser otherwise, the Division's Project Coordinator and Alternate Project Coordinator shall be:

NDEP Project Coordinator:

Jeryl Gardner
NDEP Bureau of Corrective Actions
901 S. Stewart St.
Carson City, NV 89701
775-687-9484
jgardner@ndep.nv.gov

NDEP Alternate Project Coordinator:

Ben Wilkinson
NDEP Bureau of Corrective Actions
901 S. Stewart St.
Carson City, NV 89701
775-687-9379
bwilkinson@ndep.nv.gov

- b. Unless the Purchaser notifies the Division otherwise, the Purchaser's Project Coordinator and Alternate Project Coordinator shall be:

Taurus Massey
Singatse Peak Services
517 West bridge Street, Suite A

Yerington, Nevada 89447
(775) 463-9600
Tmassey@singatsepeakservices.com

39. The Division's Project Coordinator or Alternate Project Coordinator shall be responsible for overseeing Purchaser's implementation of this Agreement. The Division's Project Coordinator or Alternate Project Coordinator shall have the authority to halt, conduct, or direct any Work required by this Agreement, or to direct any other response action undertaken at the Site. The Division's Project Coordinator or Alternate Project Coordinator shall have the authority to halt any Work required by this Agreement and to take any necessary response action when s/he determines that conditions at the Site constitute an imminent and substantial endangerment to human health or welfare or the Environment due to Release or threatened Release of Waste Material. Absence of the Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by the Project Coordinator.
40. To the maximum extent practicable, all communications from the Purchaser to the Division, and all Deliverables, documents, reports, approvals and other correspondence concerning the activities performed pursuant to this Agreement, shall be in writing and shall be directed to the Division's Project Coordinator and Alternate Project Coordinator. Communications from the Division to Purchaser shall be directed to the responsible corporate officer discussed in Paragraph 35(f) or Section XXVII (Notices and Submissions), and copied to Purchaser's Project Coordinator and Alternate Project Coordinator.

IX. ACCESS

41. Purchaser agrees to provide the Division, its authorized agents, officers, employees, representatives, and all other persons performing inspection and response actions under the Division's direction and oversight, the right of access at all reasonable times to the Site and to other property owned or controlled by Purchaser to which access is required for the implementation of this Agreement. Notwithstanding any provision of this Agreement, the Division retains all of its access authorities and rights, including enforcement authorities related thereto under NRS Chapters 445A, 445B, 459 and 519A and the regulations promulgated pursuant thereto.
42. Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

43. Purchaser shall preserve all documents and information relating to the Work for 10 years after the completion of the Work and shall submit them to the Division upon completion of the Work required by this Agreement, or earlier if requested by the Division.

XI. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. Failure to follow any of the requirements contained in this Section shall result in

waiver of the right to further consideration of the dispute in issue. The Division and Purchaser shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

45. If the Division contends that Purchaser is in violation of this Agreement, the Division shall notify Purchaser in writing, setting forth the basis for its position. If Purchaser disputes the Division's position with respect to Purchaser's compliance with this Agreement or objects to any Division action taken pursuant to this Agreement, Purchaser shall notify the Division in writing of the dispute and its position ("Notice of Dispute and Position Statement") within 14 days of receipt of the Division's notice, unless the dispute has been resolved informally. The Division may reply, in writing, to Purchaser's position within 14 days of receipt of Purchaser's notice. The Division and Purchaser shall have 30 days from NDEP's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended upon the agreement of the Parties. Such extension may be granted orally but must be confirmed in writing.
46. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. In the event that the Parties cannot resolve a dispute during the Negotiation Period, the Division Administrator will review the dispute on the basis of the Parties' written statements of position and issue a written decision on the dispute to Purchaser within 15 days following receipt of the statements of position. The Administrator's decision shall be incorporated into and become an enforceable part of this Agreement, and shall be considered the Division's final decision as provided in Paragraph 48 of this Section.
47. Purchaser's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Administrator's decision, whichever occurs.
48. As to any final Division decision, Purchaser may pursue the dispute before the State Environmental Commission as a "contested case" pursuant to NRS §§ 233B.010 et seq. and NAC §§ 445B.875 through 445B.899, inclusive, and shall be entitled to judicial review as provided therein.

XII. FORCE MAJEURE

49. Purchaser agrees to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by events that constitute a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes not reasonably foreseeable or beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents timely performance of any obligation under this Agreement despite Purchaser's best efforts to fulfill the obligation. A *force majeure* may include, without limitation: extraordinary weather events, natural disasters, strikes and lockouts, national emergencies, wars, acts of terror, delays in obtaining access or use of property not owned or controlled by Purchaser despite timely commercially reasonable efforts to obtain such access or use approval,

and delays in obtaining any required approval or permit from the Division or any other public agency that occur despite Purchaser's complete, timely and appropriate submission of all information and documentation required for approval or applications for permits within a timeframe that would allow the Work to proceed in a manner contemplated by the schedule of the Agreement. A *force majeure* does not include (i) increased costs of the Work to be performed under the Agreement, (ii) financial inability to complete the Work or (iii) normal weather events.

50. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify the Division orally within 5 Days of when Purchaser first knew that the event might cause a delay. Within 15 days thereafter, Purchaser shall provide to the Division in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.
51. The Division shall notify Purchaser in writing of its *force majeure* determination within 10 Days after receipt of the written notice from Purchaser. If the Division agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by the Division for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the Division does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, the Division will notify Purchaser in writing of its decision. If the Division agrees that the delay is attributable to a *force majeure* event, the Division will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.
52. In the event that the Division and Purchaser cannot agree that any delay or failure has been or will be caused by circumstances constituting a *force majeure*, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section XI (Dispute Resolution) of this Agreement.

XIII. INTEREST AND PENALTIES

53. The Division reserves the right to pursue all legal and equitable remedies available to it under state or federal law, including penalties, for failure to implement the Work Plan by the dates due in any approved schedule, and/or for the exacerbation of Existing Conditions through Purchaser's negligence, gross negligence, or intentional misconduct.
54. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the

noncompliance or completion of the activity. However, penalties shall not accrue: 1) with respect to a deficient submission under Section VII (Work to be Performed), during the period, if any, beginning on the 31st day after the Division's receipt of such submission until the date that the Division notifies Purchaser of any deficiency; and 2) with respect to a decision by the Division under Section XI (Dispute Resolution), during the period, if any, beginning on the 1st day after the Negotiation Period begins until the date that the Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

- 55. Notwithstanding any other provision of this Section, the Division may, in its unreviewable discretion, waive payment of any portion of the Interest or penalties that has accrued pursuant to this Agreement.
- 56. The payment of penalties shall not alter in any way Purchaser's obligation to complete performance of the Work required under this Agreement.
- 57. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 54 above, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of the Division's decision.
- 58. If Purchaser fails to pay penalties when due, the Division may institute proceedings to collect the penalties, as well as Interest. Purchaser shall pay Interest on the unpaid balance, which shall begin to accrue on the date of written demand by the Division. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Agreement or of the statutes and regulations upon which it is based.

XIV. CERTIFICATION

- 59. By entering into this agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the Division all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the Division determines that information provided by Purchaser is not materially accurate and complete, the Agreement, within the sole discretion of the Division, shall be null and void and the Division reserves all rights it may have.

XV. COVENANT NOT TO SUE BY THE DIVISION

- 60. In consideration of the actions that will be performed by Purchaser under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, the Division covenants not to sue or to take administrative action against Purchaser under Nevada State Law or pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for any matter arising out of the Response Activities addressed in this Agreement. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory

performance by Purchaser of all obligations under this Agreement. This covenant not to sue extends only to Purchaser and does not extend to any other person.

XVI. RESERVATION OF RIGHTS BY THE DIVISION

61. Except as specifically provided in this Agreement, nothing herein shall limit the power and authority of the Division to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Agreement, nothing herein shall prevent the Division from seeking legal or equitable relief to enforce the terms of this Agreement or from taking other legal or equitable action as it deems appropriate and necessary.
62. The covenant not to sue set forth in Section XV above does not pertain to any matters other than those expressly identified therein. The Division reserves, and this Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:
- a claims based on a failure by Purchaser to meet a requirement of this Agreement;
 - b criminal liability;
 - c liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - d liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Workplan, the Work, or otherwise ordered by the Division;
 - e liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, including those hazardous substances, pollutants or contaminants within the definition of Existing Contamination except to the extent such releases result from the non-negligent performance of the Pilot Study;
 - f liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
 - g liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

63. Division's Reservation of Rights.

Except as specifically provided in this Agreement:

- a. The Division reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Purchaser's failure to comply with any of the requirements of this Agreement or of any requirement of federal or state laws, regulations, or permit conditions. Except as otherwise provided in this

Section, this Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Division has under any applicable Environmental Law or common law authority of the State. This Agreement in no way relieves Purchaser of its responsibility to comply with any federal, State, or local law or regulation.

- b. The Division reserves the right to disapprove Work performed by Purchaser pursuant to this Agreement subject to Section XI (Dispute Resolution).
- c. The Division reserves any and all legal rights and equitable remedies available to enforce (1) the provisions of this Agreement, or (2) any applicable provision of State or federal law.
- d. Notwithstanding any other provision of the Agreement, the Division retains all authority and reserves all rights to take any and all response actions authorized by law.

64. This Agreement is neither a permit nor a modification of a permit.

65. Purchaser acknowledges and agrees that the Division's approval of any Work plan hereunder does not constitute a warranty or representation that the work plan will achieve the required or appropriate investigatory or performance standards.

XVII. WORK TAKEOVER

66. In the event the Division determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, the Division may assume the performance of all or any portion of the Work as the Division determines necessary and Purchaser shall reimburse the Response Costs associated with such Work takeover. Prior to taking over the Work, the Division will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser 30 days within which to remedy the circumstances giving rise to the Division's issuance of the notice (the "Cure Period"). Purchaser may invoke the procedures set forth in Section XI (Dispute Resolution) to dispute the Division's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Agreement, the Division retains all authority and reserves all rights to take any and all response actions authorized by law.

67. The Division shall submit to Purchaser copies of all invoices and supporting documentation on a quarterly basis commencing as of the expiration of the Cure Period. Submittals shall be made promptly after the Division's preparation and internal review. Such invoices shall contain reasonable detail regarding the Work performed. To the extent practicable, the Division will, and will require its consultants and Contractors to, identify in reasonable detail the costs and expenses incurred by the task to which such items were incurred.

68. All payments due by Purchaser hereunder shall be received by the Division within forty-five (45) Days of Purchaser's receipt of the invoice, shall reference the name of the Site, the Purchaser's

name and address, the progress billing number identified in the Division invoice and shall be by a check payable to the "State of Nevada Hazardous Waste Fund" for the full amount due and owing to:

Nevada Division of Environmental Protection
Attn: Chief, Bureau of Corrective Actions
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

69. Purchaser may contest payment of any Response Costs under this Section if it determines that the Division has made an accounting error or if it alleges that a cost item that is included represents costs that are unreasonable or inconsistent with the Work. Such objection shall be made in writing within thirty (30) Days of receipt of the invoice and must be sent to the Division pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Purchaser shall, within the forty-five (45) Day period, pay all uncontested Response Costs to the State in the manner described in Paragraph 68. Purchaser shall initiate the Dispute Resolution procedures in Section XI (Dispute Resolution). If the Division prevails in the dispute, within five (5) Days of the resolution of the dispute, Purchaser shall pay the sums due (with accrued Interest) to the Division in the manner described in Paragraph 68. If Purchaser prevails concerning any aspect of the contested costs, Purchaser shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to the Division. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Purchaser's obligation to reimburse the Division for Response Costs.
70. In the event that the payments required by this Section are not made within forty-five (45) Days of Purchaser's receipt of the invoice, Purchaser shall pay interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the due date of the invoice. The Interest shall accrue through the date of Purchaser's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Division by virtue of Purchaser's failure to make timely payments under this Section, including the assessment of stipulated penalties. Purchaser shall make all payments required by this Paragraph in the manner described in Paragraph 68.

XVIII. COVENANT NOT TO SUE BY PURCHASER AND PURCHASER'S RESERVATION OF RIGHTS

71. Subject to the reservations in Paragraph 72 of this Section, except with respect to the gross negligence or willful misconduct of the Division (or any of its employees, agents, contractors, or representatives), Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the Division, or its contractors or employees, for any matter arising out of the Response Activities anticipated in this Agreement, including claims based on the Division's selection of response actions, or oversight of Response Activities or approval of plans for such Response Activities which includes any direct or indirect claim for reimbursement of the Division's Response Costs.
72. Purchaser reserves, and this Agreement is without prejudice to Purchaser's rights to assert claims against the State of Nevada, subject to the provisions of NRS Chapter 41, for money

damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee, agent, contractor, or representative of the State while acting within the scope of his office or employment or agency under circumstances where the State, if a private person, would be liable to the claimant in accordance with the law of the State of Nevada.

73. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIX. CONTRIBUTION

74. Nothing in this Agreement precludes the Division or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the Division pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).
75. It is the intent of the Parties, in the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Agreement or at the direction of the Division), the Parties agree that this Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Purchaser would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are the Response Activities taken or to be taken provided in Paragraph 34.
76. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Agreement it will notify the Division in writing no later than 60 days prior to the initiation of such suit or claim.
77. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify the Division in writing within 10 days of service of the complaint on it.

XX. RELEASE AND WAIVER OF LIEN(S)

78. Subject to the Reservation of Rights in Section XVI (Reservation of Rights by the Division) of this Agreement, upon satisfactory completion of the Work specified in Section VII (Work to be Performed), and the payment of all costs due under Section XVII (Work Takeover), the Division agrees to release and waive any lien it may have on the Site now and in the future under NRS 459.930(4), for costs incurred by the Division in responding to the release or threat of release of Existing Contamination for the Response Activities addressed in this Agreement.

XXI. INDEMNIFICATION

79. Purchaser shall indemnify, save and hold harmless the Division, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Agreement. In addition, Purchaser agrees to pay the Division all costs incurred by the Division, including but not limited to reasonable attorneys' fees and other expenses of litigation, arising from or on account of claims made against the State of Nevada based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out activities pursuant to this Agreement. The State shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the State.
80. The Division shall give Purchaser notice of any claim for which the State plans to seek indemnification pursuant to this Section promptly but not later than 60 Days after service of a complaint or receipt of any other written notice of claim, and shall not settle any such claims without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Purchaser shall select counsel for and control the defense of any such claims that are subject to indemnification under this Section.
81. Purchaser waives all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the Division with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXII. MODIFICATION

82. The Project Coordinator may make minor modifications to any plan or schedule for the Response Activities set forth in Paragraph 34 in writing or by oral direction. Any oral modification will be memorialized in writing by the Division promptly, but shall have as its effective date the date of the Project Coordinator's oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the Parties. Any agreed upon amendment or modification shall be in writing, shall be signed by all Parties, shall have as its effective date the date on which it is signed by the Division as the last Party executing the amendment or modification, and shall, upon that date, be incorporated into and made enforceable under this Agreement.
83. If Purchaser seeks permission to deviate from any approved work plan, Purchaser's Project Coordinator shall submit a written request to the Division for approval outlining the proposed

modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the Division's Project Coordinator.

84. No informal advice, guidance, suggestion, or comment by the Division, its Project Coordinator, or other Division representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

XXIII. APPENDICES

85. The following appendices are attached to and incorporated into this Agreement.

- a Appendix A shall mean the map of the Site.
- b Appendix B shall mean the Enhanced Evaporation Pilot Study Work Plan.
- c Appendix C shall mean the Action Memorandum
- d Appendix D shall mean the Reasonable Steps Letter.

XXIV. NOTICE OF COMPLETION

86. When the Division determines, after the Division's review of the Final Report, that the Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Site in accordance with Paragraph 5 of this Agreement, post-removal site controls and record retention, the Division will provide written notice to Purchaser. If the Division determines that any such Work has not been completed in accordance with this Agreement, the Division will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the Division's notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Agreement.

XXV. EFFECTIVE DATE

87. This Agreement shall become effective on the date upon which it is executed by the Division as the last Party executing this Agreement, after it having previously been signed by Purchaser ("Effective Date"). This Agreement may be executed in separate counterparts.

XXVI. PAYMENT OF COSTS

88. If Purchaser fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the State to enforce this Agreement or otherwise obtain compliance.

XXVII. NOTICES AND SUBMISSIONS

89. Except as otherwise noted in this Agreement, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

Environmental Manager
Singatse Peak Services
517 West Bridge Street, Suite A
Yerington, Nevada 89447

With copies to:

Carla Consoli
Lewis Roca Rothgerber & Christie
201 East Washington Street, Suite 1900
Phoenix, AZ 85012

Submissions to the Division shall be addressed to:

Chief of the Bureau of Corrective Actions
Nevada Division of Environmental Protection
901 South Stewart Street
Carson City, Nevada 89701

XXVIII. MERGER

90. This Agreement is the final and complete agreement between the Parties with respect to the Property. This final Agreement is the result of extensive negotiations between the Parties over each provision contained herein. Each provision shall therefore be construed to have been mutually drafted and none of the Parties shall be deemed to have solely drafted this entire Agreement or any single provision herein.

///

///

///

///

///

///

XXIX. SIGNATORIES/SERVICE

91. Each undersigned representative to this Agreement certifies that he or she is fully authorized by the Parties whom he or she represents to enter into the terms and conditions of this Agreement and to execute and legally bind such Parties to this document.

Singatse Peak Services LLC
By: Thomas C. Felt
Its: Manager
Date: May 3, 2016

Nevada Division of Environmental Protection
By: David Emme
David Emme
Its: Administrator
Date: 5/4/16

Approved as to form:
By: Carla Consoli
Carla Consoli
Counsel for Singatse Peak Services
Date: May 3, 2016

By: Jasmine K. Mehta
Jasmine K. Mehta
Senior Deputy Attorney General
Counsel for the NDEP
Date: 5/4/16

APPENDIX A

Map of the Site

